IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 536 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
SHANTILAL JIVABHAI TALATI & 1 – Respondents

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Appearance :

MR MA PATEL ADDL PUBLIC PROSECUTOR for Appellant) : 1,
NOTICE SERVED for Respondents : 1 - 2.
MR AB MUNSHI for Respondents : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 14/03/2007

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. The appellant – State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1978 (hereinafter referred to as 'the Code' for short) challenging the order of acquittal dated 22.2.1999 passed by learned JMFC, Halol in Criminal Case No. 1804 of 1988 acquitting the respondents original accused of the charge committing an offences punishable under Sections 409, 467, 468, 477(A) read with Section 114 of the Indian Penal Code.

3. This Court (Coram: J.R. Vora, J.) vide order dated 22.11.1999 granted leave and admitted the Appeal.

4. Brief facts leading to filing this appeal deserves to be set out as under.

5. The Jambughoda Police Station of Panchmahal district received first information against the accused Nos. 1 and 2 on 24.5.1988, which came to be registered as I-CR No. 19 of 1988 on 24.5.1988. The informant - the Assistant Planning Officer, District Rural Development Agency, Godhra gave information that accused during the period from 18.3.1988 to 10.4.1988 while discharging their duties as public servants in collusion with each other, forged documents and made less payment to the labourers and prepared false muster roll and payment vouchers and caused monetary loss to the State

to the tune of Rs.3496=75ps. After investigation, the report in the form of police chargesheet came to be filed on 6.9.1988 in the Competent Court against the accused. The accused were brought before the Court. After recording plea of denial, the charge was framed at Ex. 17 on 15.7.1989 for trying the accused for commission of offence punishable under Sections 409, 467, 468, 477(A) read with Section 114 of the Indian Penal Code. The prosecution could examine the panch witnesses but they did not support the case of the prosecution and therefore, they were requested to be treated as hostile witnesses. Thereafter, the prosecution could not examine any other witnesses and ultimately, the trial Court was constrained to dispose of the matter on the basis of the ratio laid in case of ***RAJ DEO SHARMA VS. STATE OF BIHAR*** reported in (1998) 7 SC p.507, as the trial had prolonged and prosecution could not conduct the case effectively resulting into protracting of trial. The order of acquittal, therefore, was made on 22.2.1999, which is impugned in the present appeal filed by the State under Section 378 of the Code.

6. Shri Patel, learned APP has submitted that mere protraction of the trial in itself could not have been the basis for acquitting the accused when a serious offence by public servants of misappropriate of fund being proved. The panch

witnesses though were treated hostile, the prosecution ought to have been given full opportunity to adduce all the possible evidences and examine the witnesses in support of their case. Shri Patel, learned APP has submitted that the order impugned is therefore, erroneous and has in fact resulted into miscarriage of justice and therefore, same deserves to be quashed and set aside.

7. Shri A.B. Munshi, learned counsel appearing on behalf of respondents original accused has submitted that the proposition cannot be disputed that long pendency of the criminal trial would not ipso-facto warrant acquittal of the accused. However, if such order is made, the same need not be disturbed in the acquittal appeal as it is observed by the Constitutional Bench of the Apex Court in case of ***P. RAMCHANDRA RAO VS. STATE OF KARNATAKA***, reported in (2002) 4 SCC 578. Shri Munshi has submitted that even otherwise also, looking to the records and proceedings and the case of the prosecution, it can well be said that order of acquittal does not suffer from any infirmity so as to warrant any interference under Section 378 of the Code. Shri Munshi has therefore, submitted that the incident is alleged to have occurred way back in the year 1988 and order of acquittal impugned in this appeal is dated 22.2.1999 and the decision of the Apex Court in case of P. Ramachandra Rao

(Supra) would go to show that the order impugned may not be disturbed at this stage under Section 378 of the Code.

8. This Court has perused the record and proceedings of the case and heard the counsel for the parties at length. The fact remains to be noted that accused did face trial for serious offence affecting the Society at large. The order of acquittal is essentially based upon the ratio of the Apex Court in case of Raj Deo Sharma (Supra), however, it deserves to be noted that the trial in fact, had been protracted for a period of nine and half years and despite this time, the prosecution could not effectively proceed with the matter, which had resulted into avoidable ordeal and harassment to the accused. The accused were naturally under constant physiological pressure of being subjected to criminal prosecution for a serious offence. The panch witnesses examined on behalf of prosecution have not supported the case of the prosecution at all. After considering them as hostile witnesses, nothing further has appeared which could support the case of the prosecution. In this view of the matter, this Court is required to examine whether the order passed by the trial Court acquitting the accused mainly relying upon the ratio laid down by the Apex Court in case of Raj Deo Sharma (Supra) has in fact resulted into miscarriage of justice. The answer is “no”. Shri Patel's submission that

only long pendency of the trial should not automatically result into acquittal cannot be disputed and it is by now settled law but at the same time, it deserves to be noted that the Larger Bench of the Apex Court has considered the ratio in case of Raj Deo Sharma (Supra) and made observations as under :

*"**Para 31**: Firstly, we have dealt with the direction made by this Court in Common Cause case (I) and (II) and Raj Deo Sharma case (I) and (II) regarding trial of cases. The directions made in those cases regarding enlargement of accused persons on bail are not the subject matter of this reference of these appeals and we have consciously abstained from dealing with the legality, propriety or otherwise of directions in regard to bail. This is because different considerations arise before the criminal courts while dealing with termination of a trial or proceedings and while dealing with right of accused to be enlarged on bail.*

***Para - 32** : Secondly, though we are deleting the directions made respectively by two-and three Judge Benches of this Court in the cases under reference, for reasons which we have already stated, we should not, even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of*

criminal proceedings of whatever nature and at whichever stage before any authority or the Court. It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need to remind all concerned of what was said by this Court in Hussainara Khatoon (iv):

> *The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but 'the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty', or administrative inability.(SCC p.107, para 10)*

Para – 33 *: Thirdly, we are deleting the bars of*

limitation on the twin grounds that it amounts to judicial legislation, which is not permissible and because they run counter to the doctrine of binding precedents. The larger question of powers of this Court to pass orders and issue directions in public interest or in social action litigation, specially by reference to Articles 32, 141, 142 and 144 of the Constitution, is not the subject matter of the reference before us and this judgment should not be read as an interpretation of those articles of the Constitution and laying down, defining or limiting the scope of the powers exercisable thereunder by this Court.

***Para-34** : And lastly, it is clarified that this decision shall not be a ground for reopening a case or proceedings by setting aside any such acquittal or discharge as is based on the authority of 'Common Cause' and 'Raj Deo Sharma' cases and which has already achieved finality and reopen the trial against the accused therein."*

9. In view of the aforesaid observations, the impugned order dated 22.2.1999 passed by the Judicial Magistrate First Class, Halol in Criminal Case No. 1804 of 1988 need no interference and therefore, the appeal deserves to be dismissed and is dismissed accordingly. Bail bond, if any, stands cancelled.

(S.R.BRAHMBHATT, J.)

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